



This document was produced by Isandla Institute, in consultation with the Socio-Economic Rights Institute. It is based on a workshop facilitated by Lauren Royston in 2016 and draws extensively on the work of Urban LandMark. It is a component of the Khayalethu Initiative – a project supported by Comic Relief.

The aim of the Khayalethu Initiative is to advance models for participatory informal settlement upgrading through knowledge sharing, collaboration and experimentation. Isandla Institute's role in the Khayalethu Initiative is to inspire and inform communities of practice through research and the facilitation of engagement between practitioners in the field of informal settlement upgrading. One of these engagements takes the shape of a Cape Town-based Community of Practice. This document distils the knowledge emerging from the local community of practice engagements, and offers lessons from both theory and practice.



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EXECUTIVE SUMMARY

The enhancement of a sense of security – whether real or perceived – for residents living in informal settlements is a fundamental outcome of the upgrading approach. While lesser security intensifies vulnerability, greater security encourages residents to investment not only in their household, but also in the neighbourhoods. In order to achieve this outcome, practitioners must recognise the existing land practices through which residents living in informal settlements negotiate more secure tenure, and ensure that their interventions support these.

In this practice brief we explore the ways in which informal settlement upgrading interventions can enable residents to move along a continuum from lesser to greater tenure security without privileging individual ownership as the only desirable end-point. It offers some practical recommendations intended to guide the work of informal settlement upgrading practitioners..

Isandla Institute acknowledges the contributions made by representatives from Community Organisation Resource Centre, Habitat for Humanity South Africa, Development Action Group, People's Environmental Planning, Socio-Economic Rights Institute and Violence Prevention through Urban Upgrading during the local Community of Practice meeting held on 26 April 2016.

INTRODUCTION

Informal settlement upgrading is an approach to human settlements development that aims to improve the quality of life of the urban poor through interventions in their physical, economic and social realities. Fundamental to such an approach is the enhancement of a sense of security – whether real or perceived – for residents living in informal settlements.

While the looming threat of **arbitrary eviction** intensifies existing vulnerabilities, residents who feel secure are more likely to invest in their homes and their neighbourhoods. In South Africa, individual ownership is largely considered to be the ideal tenure arrangement as it ensures the legal right of the individual to occupy, lease, pass on or trade their land or property. And yet, individual land and property ownership is out of reach for the majority of residents living in informal settlement. Instead, the urban poor access land and shelter through a variety of more informal tenure arrangements.

In this practice brief we consider the significance of these diverse existing arrangements for residents living in informal settlements, and explore the ways in which informal settlement upgrading interventions can support existing land practices and enable residents to move along a continuum from lesser to greater tenure security without privileging individual ownership as the only desirable end-point. In order to do so we draw on the local community of practice meeting held on 26 April 2016. ¹ The meeting was facilitated by Lauren Royston and was informed by the work of the Tenure Security Facility southern Africa.²

We define land tenure and tenure security, and assess the contextual realities that have shaped South Africa's approach to these. We show that individual ownership can in fact have adverse effects on the quality of life of the urban poor and argue instead for an incremental approach to securing tenure in informal settlements. Drawing on the work of Urban LandMark (2013) (see also Royston 2013 and Royston 2014), the practice brief details a number of routes to securing tenure over time. Finally, we conclude with practical recommendations intended to guide the work of informal settlement upgrading practitioners.

Arbitrary eviction

Arbitrary eviction refers to conducted on the basis of an individual or group's discretion rather than the rule of law.

¹The local community of practice consists of Cape Town-based organisation involved in the upgrading of informal settlements. These include, along with Isandla Institute: Community Organisations Resources Centre, Development Action Group, Habitat for Humanity South Africa, People's Environmental Planning and Violence Prevention through Urban Upgrading.

² Urban LandMark established the Tenure Security Facility Southern Africa project in 2012 to provide specialist technical assistance and advisory services on tenure security within slum upgrading initiatives in Southern Africa and share lessons learnt with others in the region. The Tenure Security Facility Southern Africa project was supported by the Cities Alliance Catalytic Fund, with co-funding from the UK Department for International Development (DFID).

POLICY PROVISIONS RELATED TO TENURE SECURITY

National Housing Code (2009)

Part 3 of the National Housing Code contains the Upgrading of Informal Settlements
Programme (UISP), which sets out the processes and procedures that municipalities accessing
grant funding for the upgrading of informal settlements must follow. The objective of the
UISP is to achieve tenure security (as well as health and security, and empowerment) through
the in situ upgrading of informal settlements. The programme considers tenure security
to be the foundation for both individual and public investment in informal settlements,
and acknowledges that it can be achieved through various arrangements. It notes that
community engagement is necessary for defining the tenure arrangements that are relevant
to a particular settlement and its residents. In order to access grant funding under the UISP,
municipalities are required to enter into a Memorandum of Understanding that details the
tenure arrangements to be offered to beneficiaries. The programme also sets out a number of
conditions that must be met by alternative tenure arrangements (including, for instance, the
term of the tenure right and the rules regarding the transfer of the tenure right).

National Development Plan (2011)

The National Development Plan (NDP) primarily discusses tenure security in terms of its significance for communities living in rural areas. It does, however, also recognise its importance for the transformation of urban living environments. On the one hand, the NDP recommends that local government responds to the needs of residents living in informal settlements through initiatives that are tailored to their particular contextual realities. It is noted that such tailored responses could include the development of a mechanism for recognising tenure rights and ensuring that these are incrementally upgraded over time. On the other hand, the NDP also notes that the capabilities required to manage the complex process of incrementally increasing the security of tenure of informal residents does not yet exist in local government. The plan therefore points to the need to cultivate these capabilities.

Medium Term Strategic Framework (2014)

This document contains Outcome 8 – the Department of Human Settlements' five year plan for achieving its key objectives, including adequate housing and improved quality living environments, a functionally equitable residential property market and enhanced institutional capabilities for effective coordination of spatial investment decisions. Here, the Department defines adequate housing as housing with secure tenure and access to basic services that is situated within sustainable settlements. In Outcome 8, the Department commits to increasing the supply of housing opportunities through different tenure types.

DEFINING TENURE SECURITY

Before considering what is meant by tenure security, it is useful to first define land tenure. Land tenure 'designates the rights individuals and communities have with regard to land, namely the right to occupy, to use, to develop, to inherit, and to transfer land' (Durand-Lasserve and Selod 2007: 4).

Tenure security is defined as the right of individuals and groups to receive protection against forced eviction from the state.

It is best described as a relationship, or set of relationships, that governs the ways in which land is held (UN Special Rapporteur 2012). According the Global Land Tool Network, these relationships exist 'between people and land directly, and between individuals and groups in their dealings in land (2008 cited in Urban LandMark 2010: 3). It is the nature of these relationships that determines the extent to which individuals and groups are able to access the land rights listed above. In South Africa, as elsewhere, tenure is a complex issue. Different types of tenure systems (such as statutory, customary, religious or informal) and tenure categories (such as individual freehold, public rental or communal ownership) often co-exist within a single city (Payne 2001). Simply thinking about tenure in terms of binary terms like informal and formal, or illegal and legal, is therefore not very useful .

Rather, diverse tenure forms – and the rights to which they allow access – are shown to exist along a continuum that ranges from informal to formal (Global Land Tool Network 2008, Royston and du Plessis, 2014a). This is referred to as the continuum of land rights (see figure 1). 'Each point within this continuum provides different sets of rights and degrees of security and responsibility. Each enables different degrees of enforcement as well' (Sietchipping, Aubrey, Bazoglu, Augustinus and Mboup 2012: 3). The continuum therefore illustrates that the formalisation of land tenure need not be considered merely as a jump from formal to informal. Formalisation can also consist of a gradual progression through more informal towards more formal arrangements and rights.

Tenure security is, in turn, defined as the right of individuals and groups to receive protection against forced eviction from the state (Durand-Lasserve and Selod 2007; Global Land Tool Network 2008; Sietchipping et al 2012). The Global Land Tool Network expands on this definition by also describing tenure security as 'the certainty that an individual's rights to land will be recognised and protected by others' (2008: 5). While formal tenure arrangements are understood to provide higher levels of tenure security, it is important to note that '[secure] tenure can include both formal and informal tenure arrangements' (Sietchipping et al 2012: 3). Tenure security is essentially tied to the ways in which residents think and feel about their relationship to land and property. Residents' perception of their realities will therefore serve as an important factor determining the degree of certainty or uncertainty that they experience. For some, legal documents serve as signifiers of security, while

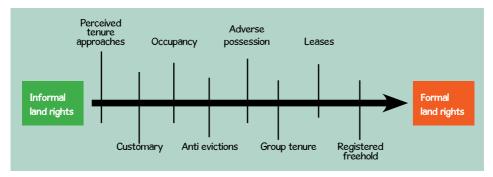


Figure 1: Continuum of Land Rights

others find the same security in their relationships with their neighbours. There are also a number of other interrelated factors, besides land tenure status, that influence a household' or neighbourhood's level of tenure security. These include primary tenure rights of the land, occupancy status of the dweller and the political and legal context (Durand-Lasserve and Selod 2007: 7).

According to Urban LandMark, drawing on the work of the Global Land Tool Network, tenure security is important because it 'generates individual, household and community benefits. It does so by encouraging savings and investments in the improvement of land, homes and neighbourhoods' (2013: 1). These investments in turn impact positively on the health and education of residents (Durand-Lasserve and Selod 2007: 12), since improved homes and neighbourhoods provide safer environments that are also more conducive to learning. Increased tenure security can also increase the participation of residents in labour markets. Secure tenure provides residents with additional free time that they would have spent at home in fear of losing their asset and 'could enable household members to shift to occupations located outside the home, all the more as outside activities are likely to be better remunerated than home activities (2007: 12).

A study conducted in Ahmedabad City found a positive correlation between de facto tenure security and improvements in the living conditions of residents living in informal settlements. The study found that increased tenure security resulted in greater household investment in home improvement. Residents in the surveyed settlements incrementally repaired their roofs, replaced temporary materials with permanent materials, connected to water and electricity supplies and extended their homes. Furthermore, residents in informal settlements with de facto tenure security indicated a higher level of literacy and were more likely to be employed in private sector services that require higher skill levels. A strong positive correlation between tenure security and household income was also observed. (Mahadevia 2010)

TENURE SECURITY IN THE SOUTH AFRICAN CONTEXT

According to Urban LandMark (2010: 7), 'debates about tenure and informality have not been particularly high profile' in South Africa. This is partly due to the large-scale rollout of the Reconstruction and Development Programme, which provided beneficiaries with individual ownership of land and property.

Spatial justice

Spatial justice is a term used to describe the intrinsic link between justice and the configuration of physical spaces within which people live (in this case, cities). It calls, on the one hand, for the transformation of living environments in order to ensure equal access to services, livelihood opportunities and public space and on the other for inclusive processes of decisionmaking.

In this context, where land has historically served as an important mechanism for social, economic and political exclusion, a focus on individual ownership may be considered an attempt to achieve social and **spatial justice** (Marcuse 2009). But this paradigm does not allow us to effectively tackle the challenges that face residents living in informal settlements. Because individual ownership is considered to be the ideal form of land holding, other forms of tenure are easily overlooked or dismissed. This means that the multiple and complex ways in which the urban poor negotiate access to land and property are not recognised or supported (Urban LandMark 2010). Payne also notes that the 'provision of full, formal tenure status to informal settlements raises the commercial value and can therefore actually reduce tenure security for the most vulnerable social groups, such as squatter tenants' (2001: 9).

In order to respond adequately to the needs of residents living in informal settlements, it is therefore necessary to embrace an incremental approach to securing tenure. As the National Development Plan notes, the 'institutional capabilities to manage processes such as incremental tenure, infrastructure and shelter upgrade and the development of appropriate regulations, in a participatory and empowering way, have yet to be developed' (National Planning Commission 2011: 273). This suggests that the adoption of an incremental approach will require a shift in the thinking and practice of stakeholders who are involved in informal settlement upgrading. In the following section we explore this incremental approach in greater detail.

Because individual ownership is considered to be the ideal form of land holding, other forms of tenure are easily overlooked or dismissed. In April 2015, a landmark judgment was delivered by the Gauteng Local Division of the High Court. The court ruling found that the Upgrading of Informal Settlements Programme (UISP) – provided for in the National Housing Code (2009) – is binding on municipalities, and compelled the City of Johannesburg to upgrade the Slovo Park informal settlement through this grant.

Despite numerous political promises that formal housing would be provided in Slovo Park, the settlement, which is home to 10 000 residents, had been overlooked for government intervention for over 20 years. In attempts to improve their living conditions, residents of Slovo Park independently developed an upgrading plan for their settlement. The City of Johannesburg refused, however, to engage with residents about their plan and instead revealed its intention of evicting residents to 'Unaville' – a housing development that had not yet been initiated. With the support of the Socio-Economic Rights Institute, residents of Slovo Park filed a case against the City of Johannesburg.

This judgment is significant not only for Slovo Park, but for all informal settlements across South Africa. It confirms that in situ informal settlement upgrading is preferred to relocation, and that the UISP cannot be ignored by municipalities. Given the UISP's strong focus on land tenure rights and its recognition that security of tenure can be guaranteed through different arrangements (see Policy Provisions), the judgment also opens up the channels through which residents living in informal settlements can access secure tenure. (Zondo and Royston 2015)



SECURING TENURE OVER TIME: AN INCREMENTAL APPROACH

There are two critical components to the incremental approach to tenure security proposed by Urban LandMark (Royston, 2014b and Urban LandMark, 2013), namely gradual progression and recognition.

The aim of the approach is to ensure that residents in informal settlements progressively move – over time – along a continuum (see figure 2) that ranges from lesser to greater tenure security (Urban LandMark 2013; Royston, 2014b).

The approach also encourages the recognition of existing land practices though administrative or legal means (Urban LandMark 2013). According to Urban LandMark, administrative recognition 'uses instruments that may arise from policies or administrative practices to give residents tenure security' (2010: 12). Examples of administrative recognition include issuing occupancy certificates, conducting enumerations and introducing services. Legal recognition, on the other hand, uses a legal procedure in terms of some recognised law to grant legal status to an area' (Urban LandMark 2010: 12). Examples of this includes township establishment and the designation of certain areas as 'Transitional Residential Settlement Areas' (Urban LandMark 2010).



Figure 2: The tenure security continuum (Urban LandMark 2013)

The incremental approach serves as an alternative to land regularisation in that it prioritises increased tenure security rather than a particular land tenure arrangement (Urban LandMark 2010). It is also important to note that it 'tends to place greater emphasis on mechanisms that secure blanket, settlement rights in the first instance, rather than individual rights' (Urban LandMark 2010: 9).

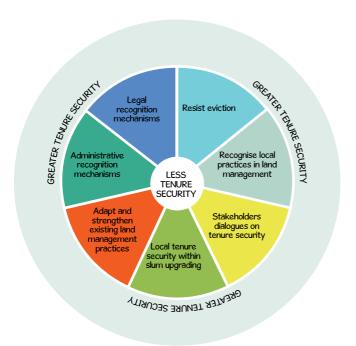


Figure 3: Seven routes to greater security of tenure derived from applied work in southern Africa supported by the Tenure Security Facility of Urban LandMark (see Urban LandMark, 2013 and Royston, 2014).

Through applied work in four southern African countries (Urban Land Mark, 2013 and Royston, 2014), Urban LandMark identified a range of 'promising practices' which provided seven routes to greater tenure security (see figure 3). The purpose of the work, conducted between 2011 and 2013, was to examine whether alternatives to large-scale titling schemes existed in practice. The routes identified are based on the everyday experiences of residents living in informal settlements in Malawi, Mozambique, Angola and South Africa and demonstrate how an incremental approach to greater tenure security could develop in practice. This project calls for the development of an alternative body of practice (Urban LandMark, 2013 and Royston, 2013) to both develop and apply incremental approaches in practice.³

Examples of administrative recognition include issuing occupancy certificates, conducting enumerations and introducing services.

³ For further detail please see Urban LandMark's booklet entitled Incrementally Securing Tenure: Promising practices in informal settlement upgrading in South Africa (2013).



FROM THE KHAYALETHU INITIATIVE: CULTIVATING ALTERNATIVE PRACTICES THROUGH REFLECTION AND DELIBERATION

During the local community of practice meeting held in April 2016, it was noted that there is still a lot of work to be done to ensure the adoption of an incremental approach to tenure security in South African cities.

On the one hand, it is difficult to shift the deeply engrained mindset that views individual ownership as the only legitimate form of land holding. And, on the other, alternative practices to land regularisation are still emerging. While the routes to tenure security identified by Urban LandMark (2013) serve as a strong foundation for alternative practices to emerge, there is still a need for practitioners to contribute to the emerging body of knowledge by documenting and testing progressive practices in their areas of work. In order to cultivate a robust alternative approach, practitioners involved in informal settlement upgrading must also come together to reflect on, and deliberate these practices. The local community of practice serves as one such a space where findings can be interrogated and assumptions challenged. Through reflection and deliberation practitioners can also define collective advocacy messages and strategies through which to lobby for the adoption of an incremental approach to tenure security.

Notwithstanding the need for alternative practices to enhance tenure security to be developed, tested and shared, some of these are already pursued by local organisations. For example:

- Renumbering of households and **providing unique dwelling numbers** that are acknowledged by the local municipality can be a useful entry point for administrative recognition.
- Using participatory enumeration to develop community profiles and household level profiles to understand the settlement and its inhabitants.
- Using the enumeration data to develop a **Community Register** that is GIS-based, which is acknowledged by the municipality.
- Providing proof of residency forms while not an official document, these can be helpful in getting municipalities to issue tenure certificates (see below).
- Providing official tenure certificates by the municipality, which acknowledge occupancy and provide residents with the right to reside on the land
- **Reblocking** in an attempt to ensure that all residents are accommodated, rather than a portion of the settlement having to relocate.

There is still a need for practitioners to contribute to the emerging body of knowledge by documenting and testing progressive practices in their areas of work.

Practical recommendations for incrementally securing tenure in informal settlements

- Start by understanding existing local practices for securing tenure and managing land;
- Build from existing local land management practices, especially the local evidence being used:
- Adapt and strengthen the local practices, especially the figures of authority and the access they give more vulnerable groups that are likely to include women and children;
- Recognise the agency of residents and local structures in managing land;
- Promote the roles of NGOs in supporting organisations of the poor to resist evictions and adapt and strengthen local practices in land management;
- Promote the roles of NGOs in building alliances with municipalities to find and demonstrate context-specific means for administrative and legal innovation to secure tenure through different forms of official recognition;
- Support municipalities to apply existing laws in innovative ways to serve tenure security objectives; and
- Advocate more widely for increasing routes to tenure security.
 (Extract from Urban LandMark 2013)



An alternative approach to securing tenure for residents living in informal settlements is emerging.

CONCLUSION

In this practice brief we have shown that tenure security is vital to the quality of life of residents living in informal settlements.

If residents are not subjected to the threat of forced eviction, they can invest in their homes, take up livelihood opportunities and contribute to their neighbourhoods. While disproportionate emphasis is still given to individual ownership and freehold title as seemingly ideal tenure arrangements, an alternative approach to securing tenure for residents living in informal settlements is emerging. This approach is focused on understanding and supporting the multiple and complex ways in which the urban poor access and engage with land and property. Given the growth of informal settlements in South Africa, the cultivation of this approach is critical if we are to respond adequately to the needs of the urban poor. Drawing on the work of Urban LandMark we have considered the theoretical and practical dimension of an incremental approach. We have also outlined some of the emerging practices as pursued by local organisations in Cape Town. Because there is a need to cultivate this existing body of knowledge in order to ensure that robust alternatives to land regularisation emerge, we have also called on practitioners involved in informal settlement upgrading to document and test progressive practices in their areas of work

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